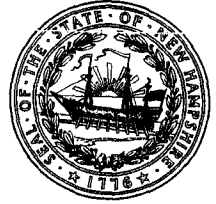




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 3, 2005

Machine Craft Corporation, Inc.
Attn: Kim Jennison, President
117 Hall Street
Concord, NH 03301

Re: Docket No. AF 05-021 – Machine Craft Corporation, Inc.

Dear Mr. Jennison:

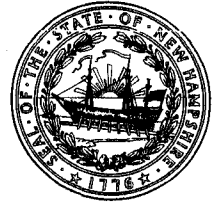
Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on May 3, 2005. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,
COPY
Michael P. Sclafani,
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Anthony P. Giunta, P.G., Director, DES Waste Management Division
Jennifer J. Patterson, NH DOJ
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
John Duclos, DES WMD
Linda Birmingham, DES WMD
George Dana Bisbee, Esq., Pierce Atwood



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Machine Craft Corporation, Inc.
117 Hall Street
Concord, NH 03301

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 05-021

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Machine Craft Corporation, Inc., pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH.
2. Machine Craft Corporation, Inc. ("Machine Craft") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on June 22, 1983. Machine Craft has a mailing address of 117 Hall Street, Concord, NH.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 610 and Env-C 612 to establish the fines for such violations.
3. Machine Craft is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on January 9, 1997. EPA Identification Number NHD500018767 was assigned to Machine Craft's site located at 117 Hall Street, Concord, NH.

4. On December 19, 2003, DES personnel inspected Machine Craft for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Administrative Order No. WMD 04-07 ("Order") to Machine Craft on July 28, 2004. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Machine Craft failed to obtain a hazardous waste facility permit for the on-site treatment through evaporation of an F003/F005 hazardous waste (*i.e.*, "Used Water-soluble Coolant"), as required by RSA 147-A:4, I, and Env-Wm 353.01 ("Violation 1"). Env-C 612.03(a) authorizes a fine of \$2,000 per treatment or storage unit at the facility.

2. Machine Craft failed to obtain a permit for the on-site disposal of an F003/F005 hazardous waste in the used oil burner (*i.e.*, "Evaporator sludge"), as required by RSA 147-A:4,I and Env-Wm 353.01 ("Violation 2"). Env-C 612.03(b) authorizes a fine of \$2,000 per disposal event.

3. Machine Craft failed to conduct adequate hazardous waste determinations on three (3) waste streams (*i.e.*, "Waste Lamps", "Used Water-soluble Coolant," and "Evaporator Sludge"), as required by Env-Wm 502.01 ("Violation 3"). DES is not seeking a potential fine for the "Waste Lamps" because they will be managed as Universal Waste, thus a waste determination is not required. Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$3,000.

4. Machine Craft failed to mark sixteen (16) 55-gallon containers of "Evaporator Sludge," and four (4) 55-gallon containers of "Used Water-soluble Coolant" observed in the "Storage Area" and one (1) 55-gallon container of "Evaporator Sludge," and one (1) 55-gallon container of "Used Water-soluble Coolant" observed in the "Manufacturing Area" with the words "Used Oil for Recycle," as required by Env-Wm 807.06(b)(4) ("Violation 4"). Env-C 612.10 (a)(1), which references Env-Wm 807.06(b)(2), modified in August 2000 to Env-Wm 807.06(b)(4), authorizes a fine of \$100 for each container that is 55-gallons or greater, for a potential fine of \$2,200.

5. Machine Craft failed to maintain and operate sixteen (16) 55-gallon containers of "Evaporator Sludge," and the four (4) 55-gallon containers of "Used Water-soluble Coolant" so as to prevent discharge of the used oil into ground waters (potential for discharge via the septic system lift station), as required by Env-Wm 807.06(b)(6) ("Violation 5"). Pursuant to Env-C 610, DES is proposing a fine of \$2,000 for storage practices that pose a hazard to human health and the environment.

6. Machine Craft failed to conduct an adequate used oil determination for the "Used Hydraulic/Gear Oil" and "Evaporator Sludge", as required by Env-Wm 807.06(b)(7) ("Violation 6"). Env-C 612.10(c) which references Env-Wm 807.06(b)(4), modified in August 2000 to Env-Wm 807.06(b)(7), authorizes a fine of \$750 per determination not made, for a potential fine of

\$750. (The potential fine for the evaporator sludge wastestream is included in the fine for Violation 3.)

7. Machine Craft failed to notify DES of its used fuel oil burner activities, as required by Env-Wm 807.10(b)(1) and Env-Wm 807.10(b)(3) ("Violation 7"). Pursuant to Env-C 610 a fine of \$500 per notification has been calculated.

8. Machine Craft failed to store four (4) universal waste lamps in containers, as required by Env-Wm 1103.03(c) and Env-Wm 1112.03(a) ("Violation 8"). Pursuant to Env-C 610 fine of \$1,000 for storage practices that pose a hazard to human health and the environment has been calculated.

9. Machine Craft failed to mark four (4) universal waste lamps, with any of the following markings: "Universal Waste – Lamps(s)", "Waste Lamp(s)", or "Used Lamp(s)", as required by Env-Wm 1102.03 and Env-Wm 1112.04 ("Violation 9"). Pursuant to Env-C 610 a fine of \$100 per container has been calculated, for a potential fine of \$400.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 4 and 7 through 9, because they are not Class I violations.

2. DES asserts that the following fines are appropriate for Violations 1 through 3, 5, and 6, which are Class I violations:

- a. \$2,000 for Violation 1;
- b. \$2,000 for Violation 2;
- c. \$3,000 for Violation 3;
- d. \$2,000 for Violation 5; and
- e. \$750 for Violation 6.

3. The total administrative fine for the Class I violations described above is \$9,750. DES agrees to reduce the penalty by \$4,875 based on Machine Craft having no history of non-compliance with the hazardous waste requirements (15%), its level of cooperation (15%), and small business reduction (20%).

4. DES agrees to suspend an additional \$1,200 contingent on Machine Craft committing no violations of statutes or rules implemented by DES for a period of one (1) year from the effective date of this Agreement. If Machine Craft is found to have violated this condition, regardless of when the determination is made, a pro-rated portion of the suspended fine shall be immediately

due and payable without opportunity for hearing, in addition to any penalty that may be imposed for the new violation(s).

5. Upon compliance by Machine Craft with the conditions specified in Section V. Paragraph 4, DES will waive the associated fine amount.

6. Machine Craft agrees to pay \$3,675 within the next six (6) months as follows:

- a. \$615 of the fine shall be due and payable upon execution of this Agreement by Machine Craft.
- b. \$3,060 shall be paid in five (5) equal payments of \$612 due on the first of each month beginning June 1, 2005 and ending with the last payment due on October 1, 2005.

7. Payment under Section V. Paragraph 6 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

8. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

9. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in this paragraph, this Agreement shall not constitute, be construed as, or operate as: (i) an admission of liability by Machine Craft; (ii) an admission by Machine Craft or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Machine Craft might raise in any third party proceeding.

By executing this Agreement, Machine Craft waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

Machine Craft shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Machine Craft and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.

10. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Machine Craft, and the Director of the Waste Management Division, and the

Commissioner of DES.

11. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

MACHINE CRAFT CORPORATION, INC.

COPY
Kim Jennison Pres.

By: Kim Jennison, President
Duly Authorized

4-25-05
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY
Anthony P. Giunta

Anthony P. Giunta, P.G., Director
Waste Management Division

4/28/05
Date

COPY
Michael P. Noon

Michael P. Noon, Commissioner

05 03 05
Date

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
James Martin, DES Public Information Officer
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Anthony P. Giunta, P.G., Director, WMD
John Duclos, WMD/DES
Linda Birmingham, WMD/DES
George Dana Bisbee, Esq.